

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-208839**DATE:** April 22, 1983**MATTER OF:** Joseph Ralph Hogan**DIGEST:**

Employee may not be reimbursed for a loan assumption fee paid to finance the purchase of a residence at his new duty station. This fee is a finance charge within the meaning of Regulation Z, 12 C.F.R. 226.4(2), and therefore is not a reimbursable real estate expense under para. 2-6.2d of the FTR.

Mr. Joseph Ralph Hogan, an employee of the Department of Housing and Urban Development, transferred from Tampa, Florida, to Jacksonville, Florida, where he purchased a residence on August 22, 1980. As part of the settlement costs, he paid a loan assumption fee of \$419.76, and he claims reimbursement of this amount.

Both the employing agency and our Claims Group disallowed reimbursement because the loan assumption fee was a finance charge under Regulation Z, 12 C.F.R. 226.4(a) (1980), and therefore not reimbursable under paragraph 2-6.2d of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973). We agree and sustain the Claims Group's disallowance (Z-2831314, August 31, 1982).

To finance the purchase of the home, Mr. Hogan assumed the seller's obligation to make monthly payments on the mortgage loan balance of \$41,942.40. The loan assumption fee of \$419.76 was a cost imposed by the mortgage lender to transfer the loan obligation to Mr. Hogan. He believes that the loan assumption fee should be reimbursed since it was a mandatory cost of purchase that was reasonable in amount as compared to the cost of paying off the loan and obtaining new financing. In this regard he states that the seller's mortgage instrument provided for a \$1,325 prepayment penalty that would have been due if the loan had been paid off and he points out that considerably higher closing costs would have been incurred if he had obtained a new loan.

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In terms of overall costs we can appreciate the reasonableness of Mr. Hogan's decision to assume the existing loan on the residence he purchased at his new duty station. We also recognize that the Government may have realized a savings as the result of his actions, though Mr. Hogan appears to be mistaken as to the extent of those savings. Because any mortgage prepayment penalty is the obligation of the seller rather than the purchaser, FTR para. 2-6.2d only authorizes reimbursement of such expense in connection with the sale of the employee's residence at his old duty station. Moreover, the regulatory prohibition against reimbursement of finance charges applies to charges incurred in connection with new loans as well as those assumed under the terms of an existing mortgage. Nevertheless, any savings Mr. Hogan may have effected do not warrant reimbursement of an expense otherwise disallowed by the regulations.

Reimbursement of Federal employee's relocation expenses is governed by chapter 2 of the Federal Travel Regulations. Part 6 of chapter 2 covers residence transactions. FTR para. 2-6.2d specifically precludes reimbursement of any fee, cost, charge, or expense which is determined to be a finance charge under Title I of the Truth-in-Lending Act, Public Law 90-321, and Regulation Z, 12 C.F.R. 226.4, issued pursuant thereto. Costs directly imposed by the lender on the borrower, including those to meet the lender's overhead expenses, are finance charges. Matter of Roth, B-194203, May 7, 1979; Matter of Vrana, B-189639, March 24, 1978; Matter of Curtis, B-186312, April 11, 1977. We have repeatedly held that a loan assumption fee is a finance charge. See e.g., Matter of Murphy, B-203634, November 24, 1981, and Matter of Connors, B-197544, July 10, 1980.

Certain items in connection with the financing of real estate are specifically excluded from finance charges under Regulation Z to the extent they are bona fide, reasonable in amount, and not for the purpose of circumventing the regulation. For example, fees for preparation of deeds, settlement statements, or other documents are excluded, as are notary fees, appraisal fees, and credit reports. If any such items are included in a loan assumption fee, they may be reimbursed if customarily paid by purchasers in the local area and provided they do not exceed the customary amount. However, the claimant must submit evidence of the specific amount of the loan assumption fee chargeable to any

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reimbursable item. Matter of Roth and Matter of Vrana,
supra. Since Mr. Hogan has not submitted such evidence the
entire claim must be disallowed.

for *Larry R. Dan Clave*
Comptroller General
of the United States